

Nursing Home Transitions: Success Through Collaborative Advocacy

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Faculty

- Gwen Orlowski, Esq.

Attorney, Central Jersey Legal Services

- Amy Brown, Esq.

Director of Advocacy and Outreach,

I Choose Home NJ / NJ Long-Term Care
Ombudsman

Learning Objectives

Participants in this session will:

1. Gain an understanding of the Money Follows the Person program and how it serves to successfully transition Medicaid residents from nursing homes.
2. Describe various legal issues that arise in complex nursing home transitions and how, in light of NJ's experience, some of these issues can be addressed.
3. Identify scenarios in which collaboration with Legal Services and/or Long-Term Care Ombudsman to advance NF transitions can prove fruitful.
4. Review the federal HCBS person-centered planning rules and better understand how those rules can be used to advocate on behalf of nursing home residents with challenging/complex circumstances in an effort to transition back to the community.

Two Nursing Home Transition Stories



Survey Question re George

What do you think will be the most difficult barrier for George to overcome to move out of the facility?

- A) past rental/housing issues
- B) cognitive/clinical issues
- C) intransigent facility staff



Ana



Survey Question re Ana

What do you think will be the most difficult barrier for Ana to overcome to move back home?

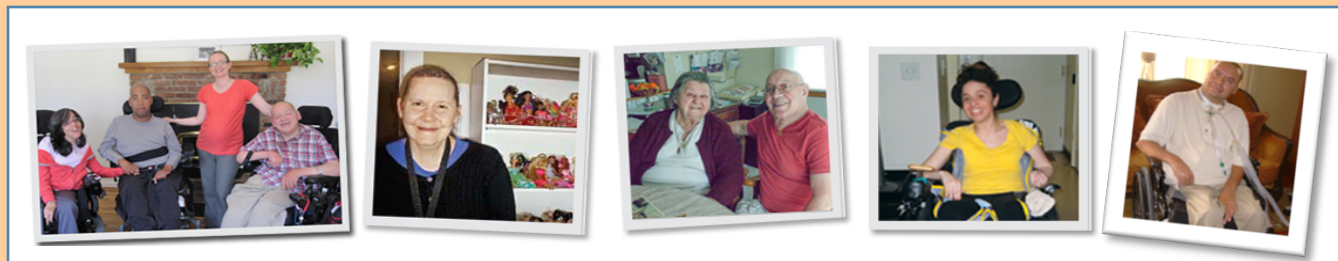
- A) family support/dynamics
- B) high need for services
- C) intransigent facility staff
- D) concerns about diminished capacity
- E) keeping apartment during planning process



What is I Choose Home NJ (MFP)?



- Helps low-income seniors and individuals with disabilities to transition from nursing homes back to the community.
- Program savings are invested into long-term care supports and services in the community, as opposed to institutions.



Long-Term Care Ombudsman (LTCO) Strengths When Transitioning Residents



- Resident-focused advocacy
- Power to investigate and resolve barriers to transition
- Access to other state partners/agencies
- Power to educate facility staff, residents, and families
- Volunteer Advocates in 80% of nursing homes

Legal Services Strengths When Transitioning Residents

- Title IIIB Mandate
- Broad subject matter legal expertise
- Litigation experience/knowledge
- Representation often ensures greater responsiveness

Subject Matter Expertise

Ombudsman	Legal Services
<ul style="list-style-type: none">• Nursing home laws and regulations	<ul style="list-style-type: none">• Housing
<ul style="list-style-type: none">• Nursing home policies / best practices	<ul style="list-style-type: none">• Consumer Law
<ul style="list-style-type: none">• Residents' rights	<ul style="list-style-type: none">• Public Benefits
<ul style="list-style-type: none">• Capacity issues (guardianship, powers of attorney)	<ul style="list-style-type: none">• Expungements

Top 5 Barriers to Transition



- Housing



- Family conflict



- Unresponsive/intransigent facility staff



- Medicaid eligibility and service planning



- Residents with diminished capacity

Housing



- Acute lack of affordable and accessible housing for very low-income NF residents
- Prior evictions, bad credit history, criminal history
- Difficulty maintaining current housing

Family Conflict

- Family and friends (loved ones) invested in person remaining in the nursing home
- Facility deferring to family, not the resident
- **Family guilt / indecision about caring for person in community**



Unresponsive / Intransigent Staff

- Pressure from management to keep residents
- Constant turnover and need to educate new staff
- Facility ignorance of M.D.S. Section Q
- Lack of consideration of **clinical and social** needs pre-transition

Medicaid

- Difficulty applying
- Confusing clinical and financial eligibility criteria
- HCBS services upon discharge
- Denials/reductions/terminations in services

MEDICAID FOR THE ELDERLY, BLIND OR DISABLED

Instructions: Before completing this form, read all instructions. Use black or blue ink only. If you need more space for answers, please use an additional sheet of paper.

Complete pages 1 through 6 and the Medicaid Change Report (Attachment 3), for future use.

If you are completing this application/review for someone else, complete the Authorization of Representative page (Attachment 2), or attach legal documentation authorizing you to be that person's appointed guardian or durable power of attorney for finances. Information provided on this application should be about the applicant, not the representative.

DENIED

SECTION I - APPLICANT INFORMATION

Name - Applicant (Last, first, middle initial) _____ Sex ☐ Male ☐ Female

Do you have any names you have previously used (last, first, middle initial) _____

If yes, what are those names? _____

Date of birth _____ Where were you born (city, state) _____

Social Security Number _____ *Race or Ethnicity _____ Are you a member of a religious organization? ☐ Yes ☐ No

Are there any minor children living in your home? _____

Diminished Capacity

- Facility “best interest” mentality
- Not speaking directly to resident him/herself
- Inappropriate deference to family/friends
- Lack of financial control

Nursing Home to HCBS: What's in the Attorney's Toolbox?

- **Person-Centered Planning Rules**
- **Medicaid Waiver: Short Term Nursing Home Stay benefit**
- **State-level Advocacy→ LTCO**
- **Litigation**

Person Centered Planning Rules

- 2014 Federal HCBS Rule
 - Justice in Aging:
[“A Right to Person-Centered Planning”](#)
- 2016 Revisions to Federal Nursing Home Regulations
 - Consumer Voice:
[“Assessments, Care Planning, and Discharge Planning”](#)

HCBS PCP Rules & Transition Planning (2014)

Consumer Leads the Process

- Requires informed choices
- Reflects strengths, preferences, goals, and desired outcomes
- Consumer retains due process rights



NF PCP Rules & Transition Planning (2016)



- Definition of Person-Centered Care
- Comprehensive Person-Centered Care Plans
- On-going Discharge Plans: focus on resident's discharge goals
- Resident has control during care planning and day-to-day decisions

Short-Term Nursing Facility Stay Benefit

NJ's 1115 Waiver STC #33

Benefit = Right to retain income while in NF
short-term

- Must be receiving HCBS prior to entering NF
- Reasonably expected to be discharge and resume HCBS within 180 days
- Use the post-eligibility rules at 42 CFR §435.726 (HCBS) rather than 42 CFR §435.725 (institutional)



\$2205/month MA vs. \$50/month PNA



Collaborating with LTCO



CJLS reaches out to NJ LTCO when:

- Nursing home is being recalcitrant
- When housing is needed
- Resident has complex medical needs
- Difficult family dynamics

George



Scenario 1, Question 1

Identify which entity – LTCO or Legal Services – would be most equipped to “first chair” the following issue:

The NF social worker is not advancing George’s transition and consistently says “But I just don’t think leaving is in his best interest!”

- A) LTCO
- B) Legal Services
- C) Both are equally equipped to handle

Scenario 1, Question 2

Identify which entity – LTCO or Legal Services – would be most equipped to “first chair” the following issue:

The State Public Housing Authority denied George’s housing voucher, citing threatening behavior in a PHA property 15 years ago.

- A) LTCO
- B) Legal Services
- C) Both are equally equipped to handle

Scenario 1, Question 3

George has a TBI and his capacity is slightly diminished, he sometimes is aggressive and makes compulsive decisions. How would this affect your advocacy?

- A) Stronger advocacy with the NF to maximize his autonomy/capacity.
- B) Ensure HCBS care plan includes TBI-specific services.
- C) Help resident identify a circle of support for decision-making in the community.
- D) All of the above.

Ana



Scenario 2, Question 1

Identify which entity – LTCO or Legal Services – would be most equipped to “first chair” the following issue:

A critical element of Ana’s discharge plan is that her niece move in with her to provide LTSS to wrap around MCO-provided PCA, but the niece keeps changing her mind and will not commit.

- A) LTCO
- B) Legal Services
- C) Both are equally equipped to handle

Scenario 2, Question 2

Identify which entity – LTCO or Legal Services – would be most equipped to “first chair” the following issue:

Ana’s MCO will only authorized a maximum of 40 hrs/wk of PCA even though there is authority under state law to provide more in exceptional circumstances. Even with niece’s help, 40 hrs/wk is not sufficient.

- A) LTCO
- B) Legal Services
- C) Both are equally equipped to handle

Scenario 2, Question 3

No one questioned Ana's capacity when she first arrived at the NF, but as the discharge planning drags on, she is beginning to exhibit short-term memory issues and has trouble making decisions.

How does this change your approach to advocacy on behalf of Ana?

- A) Review RPC 1.14 Client under a Disability
- B) Access behavioral health consult and services
- C) Include support network to help with decision-making
- D) All of the above

Summary of Learning Objectives

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Questions?

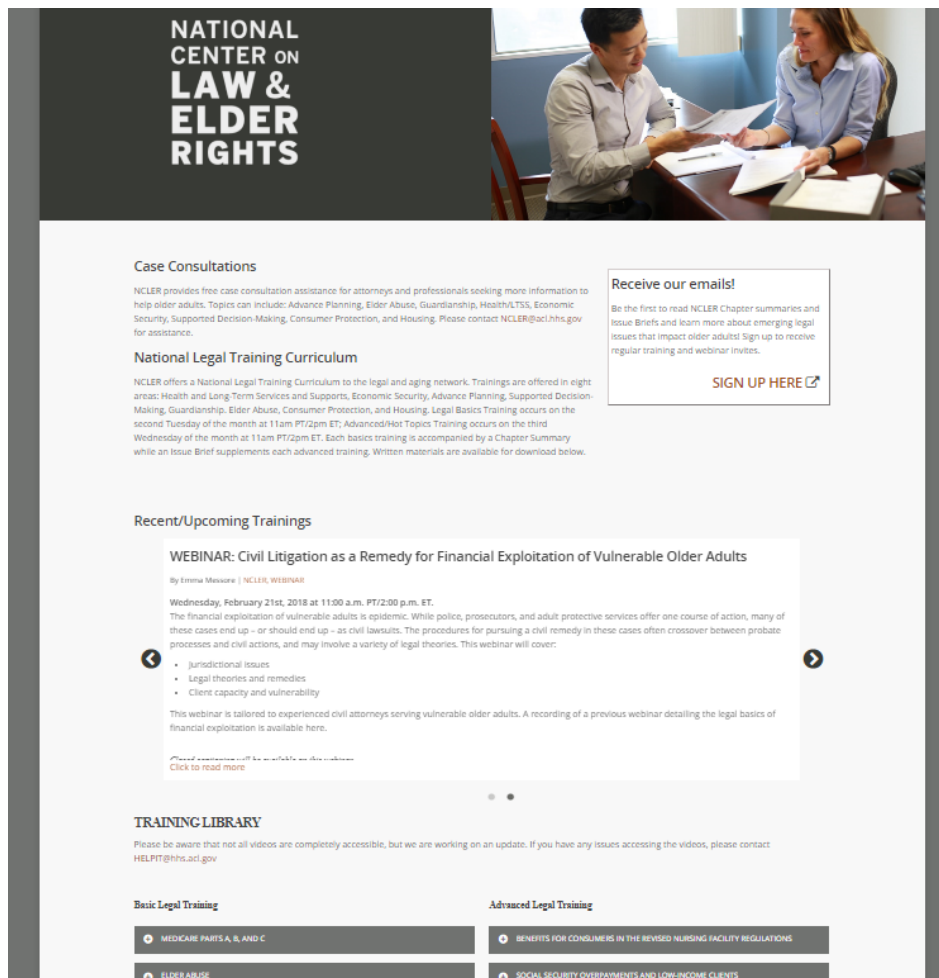
All attendees can submit questions via the chat feature on the webinar interface.

Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

Visit Our Website: NCLER.acl.gov

- Learn about upcoming NCLER trainings
- Access all materials from past trainings, including webinar recordings
- Sign up for our email list



The screenshot displays the NCLER website homepage. At the top, a header features the text "NATIONAL CENTER ON LAW & ELDER RIGHTS" in white on a dark background, alongside a photograph of a man and a woman reviewing documents at a table. Below the header, the main content area is divided into several sections. On the left, there are links for "Case Consultations" and "National Legal Training Curriculum". On the right, a "Receive our emails!" box contains a "SIGN UP HERE" button. The central section, titled "Recent/Upcoming Trainings", highlights a webinar: "WEBINAR: Civil Litigation as a Remedy for Financial Exploitation of Vulnerable Older Adults" by Emma Messore. This section includes the date (Wednesday, February 21st, 2018 at 11:00 a.m. PT/2:00 p.m. ET), a brief description of the webinar's focus on financial exploitation, and a list of topics: Jurisdictional issues, Legal theories and remedies, and Client capacity and vulnerability. Below this, a "TRAINING LIBRARY" section provides a disclaimer about video accessibility and lists two categories of training: "Basic Legal Training" (with links for Medicare Parts A, B, and C, and Elder Abuse) and "Advanced Legal Training" (with links for Benefits for Consumers in the Revised Nursing Facility Regulations and Social Security Overpayments and Low-Income Clients).

NATIONAL CENTER ON LAW & ELDER RIGHTS

Case Consultations

NCLER provides free case consultation assistance for attorneys and professionals seeking more information to help older adults. Topics can include: Advance Planning, Elder Abuse, Guardianship, Health/LTSS, Economic Security, Supported Decision-Making, Consumer Protection, and Housing. Please contact NCLER@acl.hhs.gov for assistance.

National Legal Training Curriculum

NCLER offers a National Legal Training Curriculum to the legal and aging network. Trainings are offered in eight areas: Health and Long-Term Services and Supports, Economic Security, Advance Planning, Supported Decision-Making, Guardianship, Elder Abuse, Consumer Protection, and Housing. Legal Basics Training occurs on the second Tuesday of the month at 11am PT/2pm ET. Advanced/Hot Topics Training occurs on the third Wednesday of the month at 11am PT/2pm ET. Each basics training is accompanied by a Chapter Summary while an Issue Brief supplements each advanced training. Written materials are available for download below.

Receive our emails!

Be the first to read NCLER Chapter summaries and Issue Briefs and learn more about emerging legal issues that impact older adults! Sign up to receive regular training and webinar invites.

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Recent/Upcoming Trainings

WEBINAR: Civil Litigation as a Remedy for Financial Exploitation of Vulnerable Older Adults

By Emma Messore | NCLER WEBINAR

Wednesday, February 21st, 2018 at 11:00 a.m. PT/2:00 p.m. ET.

The financial exploitation of vulnerable adults is epidemic. While police, prosecutors, and adult protective services offer one course of action, many of these cases end up – or should end up – as civil lawsuits. The procedures for pursuing a civil remedy in these cases often crossover between probate processes and civil actions, and may involve a variety of legal theories. This webinar will cover:

- Jurisdictional issues
- Legal theories and remedies
- Client capacity and vulnerability

This webinar is tailored to experienced civil attorneys serving vulnerable older adults. A recording of a previous webinar detailing the legal basics of financial exploitation is available here.

Handouts will be available on this webinar.
Click to read more

TRAINING LIBRARY

Please be aware that not all videos are completely accessible, but we are working on an update. If you have any issues accessing the videos, please contact HELP@hhs.acl.gov

Basic Legal Training

- MEDICARE PARTS A, B, AND C
- ELDER ABUSE

Advanced Legal Training

- BENEFITS FOR CONSUMERS IN THE REVISED NURSING FACILITY REGULATIONS
- SOCIAL SECURITY OVERPAYMENTS AND LOW-INCOME CLIENTS